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January 15, 1995

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Rosalind K. Allen
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Re: PR Docket No. 93-144 & PP Docket No. 93-253

Dear Ms Allen:

At Mary Brooner's request, I am forwarding a copy of the Firm's summaries of the comments in the above-captioned docket. In the near future, Mary will follow up with you concerning Motorola's efforts to address the important issues raised therein. If you have any questions, please give me a call.

Very truly yours,

Robert J. Butler

RJB/nab

Attachment

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**SUMMARIES OF THE COMMENTS RESPONDING
TO THE FURTHER NOTICE OF PROPOSED RULEMAKING
PR DOCKET NO. 93-144
PP DOCKET NO. 93-253**

R. Michael Senkowski
Robert J. Butler
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January 10, 1995

FOREWARD

On November 4, 1994, the FCC released its Notice of Proposed Rulemaking on the licensing of Specialized Mobile Radio (SMR) systems in the 800 MHz band. Comments were filed on January 5, 1995, and are briefly summarized herein. Reply comments are currently due on January 20, 1995.

We have done our best to represent each commenter's positions accurately on a range of issues within a few pages and in a consistent format. Due to space and time constraints, however, many supporting arguments have been truncated and rephrased to conserve space. Accordingly, in all cases, it is highly advisable to review the actual commenter's text.

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AUGUST BERT CARVER t/a ACTION RADIO

- SMR operator

Allocation Issues

- Action believes that the FCC's proposal to auction 200 SMR channels on an MTA basis is impractical and unworkable and, if attempted, would injure the already established SMR industry. (Incorporates its Reply Comments opposing Nextel's original proposal in this proceeding.) (1-2)

ADVANCED MOBILECOMM, INC.

- SMR service provider

Allocation Issues

- The rules proposed in the FNPRM, with certain modifications, will encourage the timely construction of wide-area SMR systems and protect the interests of local SMR systems. (2)
- Supports four 50 channel blocks for wide area systems and 80 channels for local systems. (2)
- The 150 general category channels should be limited to local SMR systems. (3)
- Local SMRs should continue to receive 5 channel blocks. (5)
- Local SMR systems should continue to be licensed on a site specific basis. (5)
- Supports the use of the 174 Economic Areas as defined by the Bureau of Economic Analysis for service areas of wide area systems. (3)
- Because of the shortage of SMR channels in the Mexican border area, the San Diego market should be licensed into two wide area blocks of 45 channels apiece. (5)

Auction Issues

- Supports the use of simultaneous, multi-round auctions. (9)
- Does not support bidding credits for designated entities, but suggests that smaller operators be allowed to pay in installments. (10)

MTA Licensee Rights and Obligations

- Applications to assign incumbent facilities to the auction winner should be considered presumptively in the public interest. (7)

Incumbent Rights and Obligations

- Supports a one-year voluntary period for relocation of incumbents. If unsuccessful, incumbents could be relocated involuntarily with auction winner providing comparable facilities at its own cost. (8)
- Existing licensees on the General Category channels should be grandfathered (3)

Treatment of General Category Channels and Intercategory Sharing

- The 150 general category channels should be limited to local SMR systems. (3)
- Intercategory sharing should be restricted except in the Mexican border area. (5)

MARC SOBEL d/b/a AIRWAVE COMMUNICATIONS

- SMR-conventional system operator

Allocation Issues

- Airwave Communications believes that the FCC's proposal to auction 200 SMR channels on an MTA basis is impractical and unworkable and, if attempted, would injure the already established SMR industry. (Incorporates its Reply Comments opposing Nextel's original proposal in this proceeding) (1-2)

AMERICAN INDUSTRIAL AND MARINE ELECTRONICS, INCORPORATED

- Small SMR operator

Allocation Issues

- It is counterproductive to auction spectrum blocks that will only benefit the companies that hold the spectrum now. The average person or company cannot benefit from winning a block of spectrum in an MTA. (2)

Auction Issues

- Auctions may make new radio spectrum too expensive for small operators. (1)
- The recent freeze on SMR applications has put a serious burden on small businesses that invested time and money in expansion plans. (1)

Construction Requirements

- Wide area licensees who have received waivers should be allowed to build, but channels that are not built before their five years are up should be returned (3)

Incumbent Rights and Obligations

- There should be no mandatory relocation. Incumbents should have full rights to renew, modify, and transfer their licenses. (2)
- Some fixed-radius protected service area for existing licensees should be provided within which they would be able to modify their systems. Short spacing of incumbents by MTA block holders should be prohibited. Incumbents should be able to use secondary sites on a non-interference basis (2)

Other

- The Commission should institute safeguards to keep speculators away. In order to apply for conventional SMR channels, applicants should prove that they have been in the two-way radio business for a specified time. (2)

**AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
(AMTA)**

- Nationwide, non-profit association dedicated to the interests of the former private carrier industry whose members include trunked and conventional 800 MHz and 900 Mhz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band

Allocation Issues

- The complex interrelationship among SMR systems in the 800 MHz band dictates an integrated approach to a revised licensing structure. The (sometimes differing) interests of all need to be protected. (9-10)
- Supports use of 200 upper channels for wide-area use and FCC's proposal to license the spectrum in four blocks of 50 channels each on a geographic basis (11)
- Stresses that upper channels are currently congested and that the award of a wide-area license will essentially be an award of white space. (12)
- The commenter suggests the use of BEAs for wide-area SMR licensing in its summary, but in the text, it states that, although it supports geographic licensing, it will provide the FCC with an industry consensus position on the size of the area for licensing of all similar services in its reply comments (i,14)
- No consensus has been reached on whether site-specific or geographic based licensing should be used for traditional SMR systems. If a geographic-based licensing scheme of local SMR systems is adopted, BEAs should be used to define the areas since they approximate more closely than do BTAs the coverage range of existing systems. (25-26)

Auction Issues

- Congress did not intend for the FCC to use competitive bidding procedures for either wide-area or more traditional SMR systems. (7)

MTA Licensee Rights and Obligations

- Supports FCC proposal to bundle wide-area rights, which would be granted to these licensees so as to create regulatory parity between SMRs

and other CMRS services. This objective will be furthered by the FCC proposal that any recovered spectrum in the wide-area block revert to the wide-area licensee. (11)

Construction Requirements

- Supports the FCC proposal to allow wide-area licensees five years to construct their systems and the use of interim construction requirements to ensure that licensees begin providing service to at least part of their authorized service area on a timely basis. (14-15)
- In many cases, a wide-area licensee will be able to satisfy construction requirements by providing service only to the metropolitan area of the MTA. However, non-urban incumbent operators will be unable to expand without the wide-area licensee's consent. Therefore, the FCC should consider other criteria, such as geographic area, in its construction requirements. (15)
- Multichannel construction requirements would prevent anti-competitive behavior and encourage wide-area licensees to provide service to more customers (16)

Incumbent Rights and Obligations

- There is not yet an industry consensus on mandatory relocation of incumbent SMR systems currently operating in the upper 200 channels. The commenter lists industry concerns on this issue:
 - Business devaluation is inevitable if there is mandatory relocation.
 - Market forces should determine the course of local SMR businesses.
 - Wide-area systems need clear, contiguous spectrum for long-term economic viability and mandatory relocation is necessary because of imperfect market forces (17-19)
- Supports FCC proposal to ensure a defined protected service area for incumbent systems in the upper 200 channels. Recommends that FCC proposal that these licensees be entitled to redeploy frequencies and construct new stations within a defined service area be extended to all trunked systems and that the co-channel interference criteria should be the same as well (20)

- Recommends against using a fixed radius to define this protected area since such a standard bears little or no relation to a real-world system service and instead the FCC should permit all 800 MHz licensees the flexibility to deploy their authorized channels as long as doing so does not expand the 22 dBu interference contour of the original facility. (20)
- Supports presumptive consideration of a transfer or assignment of an incumbent authorization to the wide-area licensee to be in the public interest, but requests that FCC clarify that an incumbent's transfer or assignment of channels to a third party not be presumed contrary to the public interest. (13)

Treatment of General Category Channels and Intercategory Sharing

- The General Category channels should be reallocated for SMR use exclusively and future SMR intercategory sharing of Business or Industrial/Land Transportation frequencies should be eliminated. This will provide spectrum for those who are displaced by wide-area licensees. (21-22)
- Eliminating future SMR use of the General Category channels will not lead to further spectrum availability for non-SMR use since the vast majority of those frequencies are already being used in trunked SMR operations in most areas of spectrum scarcity. (23)

Other

- Congress did not intend for the FCC to adopt so sweeping a definition of CMRS as to encompass even the smallest SMR system, irrespective of its similarity to broadband CMRS systems. (7)

AMERICAN PETROLEUM INSTITUTE

- Trade association of private radio users

Incumbent Rights and Obligations

- If mandatory relocation is ordered, relocated licensees must receive equivalent channel assignments and all equipment modification, personnel, and administrative costs must be borne by the SMR/MTA licensee. (4)
- Relocated licensees should be paid a "premium" to cover the inconvenience of relocation. (4)
- API opposes mandatory relocation due to its disruptive nature and because wide area SMR systems are fully capable of operating throughout most of the U.S. without forcing the relocation of incumbents. (7)
- The ability to "fill-in" a defined service area should apply to all incumbents in the upper 200 channels, including the "few remaining private trunked systems." (8)

MTA Licensee Rights and Obligations

- API supports the proposed co-channel interference standards. (8)

Treatment of General Category Channels and Intercategory Sharing

- The FCC should foreclose future SMR licensing on Pool (i.e., Business, Industrial/Land Transportation, and Public Safety) frequencies and on the General Category frequencies. (4)
- At a minimum, should the FCC decide not to eliminate future SMR licensing on Pool and General Category channels, the FCC should designate no more than 10% of the General Category channels for SMR-only use. (6)

AMERICAN SMR COMPANY L.C.

- SMR management company developing wide area SMR systems

Allocation Issues

- Strongly opposes licensees being able to aggregate up to 14 MHz in any market. (5,6)

Other Issues

- The FCC must grant all of the pending applications prior to the implementation of the new regulatory framework and the holding of any 800 MHz SMR auctions. (3)
- Parties with applications pending per the release of the FNPRM should be eligible to participate in the auctions if the FCC were to adopt some type of eligibility restriction (4)
- If the FCC were to dismiss pending applications, this group should be treated as a "designated entity" in any subsequent auction. (5)

ANHEUSER-BUSCH COMPANIES, INC.

- Holder of licenses for an 800 MHz trunked, internal-use only business radio system

Treatment of General Category Channels and Intercategory Sharing

- Opposes the FCC's proposals to revise the eligibility rules for the General Category and pool channels to prohibit SMR and non-SMR applicants from applying for the same channels. (3-4)
- States that the FCC's existing policies permitting business radio eligibles to apply for SMR-allocated General Category and pool channels meet important communications needs and serve the public interest. (3-4)
- Argues that the proposed changes would compel 800 MHz trunked private mobile licensees to migrate to below 470 MHz business radio conventional operations to meet spectrum needs, conflicting with the FCC's prior determination that trunked operations are in the public interest. (4)
- The proposal to separate SMR spectrum from spectrum shared with non-commercial radio services in the General Category and pool channels would change how "private services" are licensed, contrary to Congressional intent. (5-7)

APPLIED TECHNOLOGY GROUP, INC.

- Small SMR operator in San Joaquin Valley, California

Allocation Issues

- In view of the fact that Nextel, or other ESMRs, have yet to demonstrate that they can build and operate ESMR networks, the instant proceeding is premature. (1-2)
- The FNPRM is premised on the unproven assumption that ESMRs should compete with PCS and cellular, which is doubtful in light of the spectrum disparities. (3-5)
- Attempting to shoehorn existing services into an MTA mold is inadvisable in light of the problems that already exist with respect to erroneous grants and the resultant potential for litigation. (5-6)
- MTA licensing is likely to be a net loss to the Treasury in view of the potential for litigation and disputes and the limited value of already-used spectrum. (7)
- There is no need to upset the existing SMR service in light of the fact that if they really need to, ESMRs can acquire existing systems by purchasing them. the proposal will only result in warehousing of spectrum. (8-9)
- Since the FCC has determined that two cellular systems are insufficient to provide competition, it should prohibit ESMRs from acquiring more than 66 of the 200 channels for MTA licensing. (12)

Auction Issues

- To promote competition, the FCC should limit any licensee to acquiring no more than a single 50 channel block in the initial auctions. (12)
- The FCC should provide incentives to small business SMRs by reserving the entire block of 280 SMR channels for designated entities. (18-19)

Incumbent Rights and Obligations

- The FCC should not mandate forced channel swaps, since: (1) ESMRs can acquire the channels by purchase; (2) new channels that do not permit ESMR operation are inherently not "fully comparable;" and (3) mandatory relocation will result in extensive evidentiary hearings and FCC expense (9-10)
- Because Section 90.667 of the Rules appears to create an irrebuttable presumption that acquisition of an incumbent by an MTA licensee is in the public interest, it does not appear lawful in light of 47 U.S.C. § 314, which prohibits lessening of competition. (11-12)
- In the interests of increasing competition, the FCC should permit existing incumbents to increase their service areas after grant of an MTA license on the same basis as the MTA licensee (13-14)
- If existing licensees are not permitted to expand at their convenience, the FCC should adopt a plan similar to cellular, where incumbents were permitted to file an incontestible major modification application prior to others filing unserved areas applications (14)
- The FCC should provide sufficient opportunities to allow existing SMR operators to modify their facilities, since site owners, realizing licensees are trapped, are raising their rates -- it suggests allowing free relocation, provided only that other incumbent and MTA stations are provided with 40/22 dBu protection. (15-16)
- Supports FCC suggestion at ¶40 to establish a 30 km fixed-radius protected service area where existing licensees could place fill-in stations. (16)
- The FCC should respect the rights of waiting list applicants and require ESMR licensees to acquire all contingent rights to use a channel before using recovered spectrum. (17-18)

Treatment of General Category Channels and Intercategory Sharing

- Intercategory sharing should be permitted to continue; the FCC's proposal lacks a factual basis and the availability of resources for I/LT licensees should not be problematic given the projected efficiency of ESMR systems (11)

Other Issues

- To provide certainty, the FCC needs to clarify the meaning of any waiver granting authority to engage in wide area operation to provide an unambiguous date for termination of the waiver. (16-17)

**ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS
OFFICIALS-INTERNATIONAL, INC. (APCO)**

- Public safety communications organization whose members are involved in police, fire, emergency medical, forestry-conservation, highway maintenance, and disaster relief

Treatment of General Category Channels and Intercategory Sharing

- Urges the FCC to prohibit further SMR licensing on General Category and Pool channels. Public safety entities prefer to be licensed in the Public Safety Pool or National Public Safety Plan channels, but often the General Category is the only source of available SMR channels. (3)
- The General Category channels have been depleted in many areas because of speculative SMR licensing. Because the General Category Pools and Business and Industrial/Land Transportation (I/LT) Pools have become saturated with SMR licenses, the Business and I/LT eligibles have in some cases tried to obtain channels in the Public Safety Pool through intercategory sharing. This deprives public safety organizations of spectrum needed for critical safety uses. (3-4)
- The FCC should make efforts to weed out SMR licensees who have no genuine intention of constructing and operating their systems. (4)
- The FCC should prohibit further intercategory sharing of the Public Safety Pool Channels to preserve those channels for public safety operations. (5)
- Under no circumstances should the FCC consider reserving the General Category exclusively for SMR use as that would preclude further public safety use of those channels and put additional pressure on the Public Safety Pool. (5)

ATLANTIC CELLULAR COMPANY L.P.

- Cellular radio service provider and developing a wide-area digital SMR system in Michigan, Ohio & Indiana

Incumbent Rights and Obligations

- Mandatory relocation is anti-competitive (2)
- PCS is not a good analogy for SMRs in terms of mandatory relocation because microwave operators are not competing with PCS operators. (3)
- Mandatory relocation will involve great effort to re-tune customers' handsets. The change-out will take 2-3 hours. Including travel time, SMR customers may require up to 25% of a work day to change frequencies (3)

AUTOMATED BUSINESS COMMUNICATIONS

- SMR operator

Allocation Issues

- Supports proposal to divide the upper 10 MHz into four 2.5 MHz blocks of 50 channels, but, to allow for two MTA licensees in each market, proposes that no more than 7.5 MHz of the 10 MHz be available to any one entity. (2-3)
- Under the above proposal, if an MTA licensee required more channels, it could secure them from the lower 80 SMR and 150 General Category channels. (3)
- Supports continuation of site specific licensing for all local channels. If the Commission proceeds with area specific licensing, urges limiting this approach to areas where there is currently no use of the spectrum to be licensed. (3)

Auction Issues

- Opposes auctioning local SMR channels. (6)

MTA Licensee Rights and Obligations

- MTA licensees should be required to observe a 40/22 dBu co-channel separation, as should all licensees. (4)
- MTA licensees should not be able to construct within the 22 dBu contour of incumbent co-channel licensees and local licensees should be prohibited from locating their sites within the 22 dBu contour of other local licensees. (4-5)

Construction Requirements

- Supports strict enforcement of the one year construction deadline for local SMRs, and the requirement that licensees begin serving customers by the end of the construction period. Also supports strict construction for MTA licensees and license forfeiture for failure to comply. (5)